

The rolling stock exemption applies to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. See 35 ILCS 120/2-5(13). (This is a GIL.)

November 24, 2004

Dear Xxxxx:

This letter is in response to your letter dated May 12, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We represent a COUNTRY corporation which operates tug boats in COUNTRY waters. The COUNTRY corporation prefers that the tug boats not be owned by the COUNTRY corporation. The COUNTRY corporation would propose to form an Illinois corporation as a subsidiary. The subsidiary would purchase tug boats in Illinois and lease them to the COUNTRY corporation for use in COUNTRY waters. If the purchase of the tug boats would be subject to Illinois Sales or Use Tax, the transaction would not be feasible.

It would seem that either 35 ILCS 105/3-55(b) and (j) would provide exemptions under the use tax and there are similar exemptions under the sales tax provisions. In addition there are the General Information Letter, ST 95-0446-GIL and Private Letter Ruling, ST 90-0246-PLR relating to tow barges and tow boats respectively on the Illinois and Mississippi Rivers respectively.

It would appear that the proposed transaction should be exempt from Illinois Sales and Use Tax. We would appreciate receiving your opinion regarding this matter. We would be happy to provide you any additional information which you might need.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase.

When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to the purchaser, the gross receipts from the sale are subject to tax if the sale is a sale at retail. However, the gross receipts from a sale in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made, are not subject to tax. See 86 Ill. Adm. Code 130.605(b). Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State transports or sends the property out of this State for use outside the State or for use in the conduct of interstate or foreign commerce. See 86 Ill. Adm. Code 130.605(a)(2).

For example, the exemption would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. The result would be different if the purchaser received or picked up the goods prior to delivery to a freight forwarder. Retailers who deliver property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability. If the purchaser receives or picks up the goods in Illinois prior to delivery to the freight forwarder, Use Tax liability would be incurred and must be paid to the seller.

The Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or to lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. See 86 Ill. Adm. Code 130.340(a). The exemption applies to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. See 35 ILCS 120/2-5(13).

In order to claim the rolling stock exemption for a boat, the carrier must be able to document that it has authority to operate as an interstate carrier for hire and show that it does in fact so operate on a regular and frequent basis. Absent the ability to document that the carrier has authority to operate as an interstate carrier for hire and operate the boat in a manner that qualifies for the exemption, no rolling stock exemption is available.

When the rolling stock exemption may properly be claimed, the purchaser should give the seller a certification that the purchaser is an interstate carrier for hire, and that the purchaser is purchasing the property for use as rolling stock moving in interstate commerce. If the purchaser is a carrier, the purchaser must include its Interstate Commerce Commission Certificate of Authority number or must certify that it is a type of interstate carrier for hire that is not required by law to have an Interstate Commerce Commission Certificate of Authority. If this is the case, the carrier must include its Illinois Commerce Commission Certificate of Registration number indicating that it is

recognized by the Illinois Commerce Commission as an interstate carrier for hire. If the carrier is a type which is subject to regulation by some Federal Government regulatory agency other than the Interstate Commerce Commission, the carrier must include its registration number from such other Federal Government regulatory agency in the certification claiming the benefit of the rolling stock exemption. See 86 Ill. Adm. Code 130.340(f).

Please see Public Act 93-1033 for important information regarding rolling stock moving in interstate commerce. In addition, you may inquire on the Department's web site for bulletins and other information regarding the exemption.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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